

CERTIFIED TRUE COPY

STATE OF NEW JERSEY
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION OF CONSUMER AFFAIRS
 NEW JERSEY STATE BOARD OF DENTISTRY
 DOCKET NO.

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
SALVATORE R. GRAZIOSI, D.D.S.	:	ORDER TEMPORARILY SUSPENDING
	:	LICENSE TO PRACTICE DENTISTRY
	:	
TO PRACTICE DENTISTRY IN THE	:	
STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry (hereinafter, sometimes "Board") upon the filing of a Notice of Motion for a Temporary Suspension of License to Practice Dentistry, a Verified Complaint and supporting Affidavits by Robert J. Del Tufo, Attorney General of New Jersey by Kathy Rohr, Deputy Attorney General.

The First Count of the Verified Complaint alleges that Salvatore R. Graziosi, D.D.S. (hereinafter, sometimes "respondent") was arrested on or about February 3, 1990 by the Ship Bottom (New Jersey) Police Department and charged with nine counts of unlawfully distributing Controlled Dangerous Substances by dispensing and nine counts of unlawfully conspiring to distribute Controlled Dangerous Substances. The Complaint further alleges that on or about February 3, 1990, respondent was charged by the Stafford Township (New Jersey) Police Department with thirteen counts of

unlawfully conspiring to distribute Controlled Dangerous Substances. In addition, the Complaint alleges that on or about February 3, 1990, Division of Consumer Affairs, Enforcement Bureau Special Investigator George R. Kern interviewed respondent who admitted to writing more than a hundred prescriptions for Controlled Dangerous Substances for non-dental cause for a female known to be a Controlled Dangerous Substances abuser. The Complaint alleges that respondent's stated reason for his conduct was that he was in love with the woman. The Complaint also alleges that the respondent further admitted to Special Investigator Kern that he falsified prescriptions for Controlled Dangerous Substances by writing the names of various patients or persons on the prescriptions although the Controlled Dangerous Substances were intended for his female companion and that the bearers of the prescriptions were not the named persons. The Complaint further alleges that the respondent stated to Special Investigator Kern that he took some of the prescriptions which he issued to area pharmacies to be filled using the names of different persons and that he would then deliver the Controlled Dangerous Substances to his female companion.

The second count of the Complaint alleges that from on or about January 17, 1990 to February 5, 1990, respondent provided an investigator, acting in an undercover capacity, with prescriptions issued in the fictitious name of "Sonny Andrews" for Percocet and Percodan without any complaint of pain or for any medical or dental purpose and without any medical or dental examination. The Com-

plaint further alleges that the transactions took place on at least four separate occasions. It is also alleged that the investigator never presented a dental complaint of any kind and that respondent issued prescriptions for Controlled Dangerous Substances to the investigator even though the investigator told him he was selling the Controlled Dangerous Substances to other persons for profit. Finally, the Complaint alleges that the respondent told the investigator, during the undercover activities, how he personally obtains prescriptions under fictitious names at area pharmacies.

The Attorney General's application for temporary suspension was made pursuant to N.J.S.A. 45:1-22, which provides that the Board may temporarily suspend or limit a license to practice dentistry if a duly verified application alleging acts in violation of the statutes or regulations administered by the Board "palpably demonstrates a clear and imminent danger to the public health, safety and welfare." The application included an Affidavit dated February 16, 1990 from Kurt A. Mehl, Detective, Stafford Township Police Department; an Affidavit, with attachments, dated February 13, 1990, from George R. Kern, Jr., and an Affidavit, with attachment, dated February 16, 1990, from George R. Kern, Jr. Respondent, who was served with the Attorney General's Motion and supporting papers on or about Friday, February 23, 1990, did not submit any responsive papers.

A hearing on the Attorney General's temporary suspension application was held on February 28, 1990 before Samuel E. Furman, D.D.S., President of the New Jersey State Board of Dentistry. The

Board had previously delegated authority to the Board President to hear the Attorney General's application. Dr. Graziosi was represented by Edward F. Liston, Jr., Esq. The Attorney General was represented by Kathy Rohr, Deputy Attorney General.

Initially, Dr. Graziosi's attorney requested a two week adjournment of the proceedings arguing that he had received inadequate notice of the application. Although Dr. Graziosi did not retain Mr. Liston until the morning of the temporary suspension application, both Dr. Graziosi and Mr. Liston's law firm had received the Attorney General's Motion and supporting papers on or about February 23, 1990, a full five days before the scheduled return date. As the statute (N.J.S.A. 45:1-22) contemplates short notice and given the seriousness of the allegations against Graziosi (i.e., that his conduct posed a clear and imminent danger to the public health, safety and welfare), Dr. Graziosi's request for an adjournment was denied.

The Attorney General argued that based upon the affidavits submitted in support of the Motion for Temporary Suspension, a sufficient showing had been made to temporarily suspend Dr. Graziosi's license to practice dentistry. Dr. Graziosi objected to any suspension based solely on affidavits, arguing that the affidavits were hearsay and that since both witnesses (Investigator Kern and Detective Mehl) were present and available, their testimony should be presented and subjected to cross-examination. Dr. Furman ruled that he would allow Investigator Kern to testify. Under direct examination by Deputy Attorney General Rohr, Investigator

Kern testified that he is employed by the Division of Consumer Affairs, Enforcement Bureau, as an investigator in the drug diversion section and that the Enforcement Bureau's investigation of respondent was based on information received from Detective Mehl that several physicians were dispensing Controlled Dangerous Substances to area (i.e. Ship Bottom area) junkies. The investigator stated that he interviewed respondent on February 3, 1990 at the Ship Bottom Police Department subsequent to respondent's arrest (that day) on the drug charges. Investigator Kern further testified that, on February 3, 1990, respondent admitted to him that he (respondent) was aware of the charges against him and that he knew that what he did was wrong. Investigator Kern testified that respondent admitted to writing more than 100 prescriptions in the names of others, when, in fact, the drugs were for one individual, Ellen Evans, with whom he was having a relationship. Investigator Kern stated that respondent advised him that while Ms. Evans filled some of the prescriptions herself, other people filled some of the prescriptions for her. Investigator Kern testified that there was no indication that respondent was treating Ms. Evans for a dental condition. The investigator further testified that respondent stated that he wrote well over a hundred prescriptions. Investigator Kern stated that before interviewing respondent he identified himself fully and told respondent that he (respondent) did not have to speak to him but that respondent freely chose to speak with him. Finally, Investigator Kern testified that respondent stated that he was trying to help Ms. Evans out because she had a drug problem.

Under cross-examination by respondent's attorney, Edward Liston, Investigator Kern testified that prior to his interview with respondent he neither warned respondent that he had a right to remain silent nor advised respondent of his right to counsel. Investigator Kern testified that it was his understanding that respondent had been advised of his rights and that respondent advised him that he (respondent) did not wish to speak to the police. The Investigator testified that he showed respondent credentials which identified him as an investigator with the Division of Consumer Affairs Enforcement Bureau. Mr. Kern stated that he had shared information obtained during his interview of respondent with the police department. Investigator Kern testified that from the time he learned that the Ship Bottom Police Department was investigating respondent (sometime in or after October 1989), he did no "hands on" investigative work, but rather received reports on the ongoing investigation from the police department. Investigator Kern further testified that it was approximately January 29, 1990 when he was advised that undercover activities were to take place in connection with the police department's investigation of respondent. The investigator testified that he was advised by the police department on February 3, 1990 that Dr. Graziosi was to be arrested and charged that day and was invited to come to the police department as an observer. Investigator Kern stated that he was not present at respondent's arrest, but was at the police department when respondent arrived. Mr. Kern testified that he first saw respondent at about 6:15 p.m. on February 3, 1990 in a room,

sitting by a detective's desk and that when he knew the detectives were finished with respondent, he asked to speak with respondent and took him to another room where he spoke with him for approximately 10 to 15 minutes. Investigator Kern further testified that respondent admitted the prescriptions he had written were for Ellen Evans and stated that Ms. Evans was an attractive woman and that he was in love with her. The investigator stated that after his conversation with respondent, respondent told him that he (respondent) would then speak with the police and that he (investigator) called the detective over. Investigator Kern testified that he interviewed the respondent again on February 9, 1990. The investigator stated that at that interview respondent told him: that he had treated Ms. Evans as a patient a few years ago and that he had prescribed Percodan/Percoset for her at that time; that Ms. Evans had asked him for prescriptions; that he and Ms. Evans were friends, nothing more; that he provided all the prescriptions for Ms. Evans and her drug problem, even if those prescriptions written in another name; that Ms. Evans threatened to blackmail him if he did not provide the prescriptions; that the blackmail threat was why he gave Ms. Evans the prescriptions; and that he had received the first threat from Ms. Evans in the summer of 1989. Investigator Kern also testified: that respondent advised him that Ms. Evans had had a car accident previously and had injured her mouth; that he had originally treated Ms. Evans as a patient in the absence of her regular treating dentist; and that he had written prescriptions for Ms. Evans while she was a patient of her regularly treating

dentist. Mr. Kern stated that the February 9th interview with respondent had lasted approximately 25 to 30 minutes and that other people (i.e. detectives) were present during portions of the interview.

Mr. Liston started to question Investigator Kern about other materials contained in his affidavit which had not been testified to during his direct examination. The Deputy Attorney General objected to that line of questioning, asserting that Mr. Liston's cross-examination was limited by the scope of the direct examination. The Deputy Attorney General's objection was sustained on those grounds. On redirect examination by the Deputy Attorney General, Investigator Kern testified that he did not recall that respondent had told him that he (respondent) wrote prescriptions for dental treatment of Ms. Evans.

Argument then took place concerning whether Detective Mehl, who was present, would testify. Dr. Furman ruled that Detective Mehl could testify. The Deputy Attorney General chose not to have Detective Mehl testify and respondent did not call Detective Mehl as his witness either.

Respondent presented no witnesses, nor did he testify on his own behalf (because of the pending criminal charges).

In his closing argument on behalf of respondent, Mr. Liston implored Dr. Furman not to suspend respondent's license to practice dentistry. Mr. Liston argued: that respondent became involved with Ms. Evans first professionally and then personally and that in an attempt to help her, he gave her prescriptions for

a dental condition she had; that what respondent did was not for profit or personal gain; that Ms. Evans was the only one this was done for; that respondent had a personal relationship with Ms. Evans; and that Ms. Evans had extorted respondent. Mr. Liston further argued that the allegations did not touch and concern respondent's practice of dentistry on Long Beach Island and that rather than suspend respondent's license to practice dentistry, it might be appropriate to suspend his license to dispense or prescribe Controlled Dangerous Substances. Mr. Liston argued that a temporary suspension would deprive respondent of his opportunity to earn a livelihood and suggested that respondent could work under another dentist's supervision. Finally, in arguing that a temporary suspension of licensure not be imposed, Mr. Liston characterized the allegations as one drug incident peripheral to respondent's practice which would not happen again.

In her closing statement, Deputy Attorney General Rohr argued that it was only because respondent is a licensed dentist that he could write prescriptions and he used his license to provide a known drug addict with narcotics. The Deputy Attorney General further argued: that there was no indication that respondent ever attempted to treat Ms. Evans or that he ever referred Ms. Evans for treatment for her pain; that respondent wrote more than 100 prescriptions for Ms. Evans and knowing that it was wrong, wrote prescriptions in other people's names; that the fact that respondent was threatened by Ms. Evans does not mitigate his conduct. Finally, the Deputy Attorney General argued that, for the

purpose of the temporary suspension application, the allegations had been proven.

DISCUSSION

Dr. Furman determined that, in considering the Attorney General's application for temporary suspension of respondent's license to practice dentistry, he would limit his decision to Count I of the Verified Complaint (the count as to which Investigator Kern testified). Based upon the Attorney General's Notice of Motion for Temporary Suspension of License, the Verified Complaint (with accompanying Affidavits), the testimony presented on February 28, 1990, and the arguments of the parties, Dr. Furman found that respondent presented a clear and imminent danger to the public health, safety and welfare. Dr. Furman based this determination on the following findings: respondent used his dental license, without which he could not have written prescriptions for Control Dangerous Substances, to provide over 100 prescription for Percodan and/or Percocet to a known drug addict for no dental purpose. Respondent knew that these prescriptions were inappropriate and illegal and for that reason wrote prescriptions in the names of other persons. The amounts of Controlled Dangerous Substances prescribed by respondent were far in excess of what would be prescribed by a prudent practitioner even if there were a valid dental purpose. Further, it is expected by the Board of Dentistry that a dental licensee be of good moral character and be able to exercise proper judgment in prescribing or dispensing Controlled Dangerous Substances.

Consequently and for the foregoing reasons,

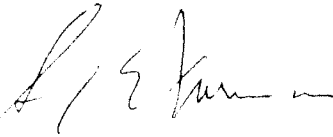
IT IS ON this 7th day of March, 1990,

HEREBY ORDERED THAT:

1. The license of Salvatore R. Graziosi, D.D.S., to practice dentistry in the State of New Jersey is hereby temporarily suspended pending a plenary hearing on the administrative complaint. The effective date of this Order is February 28, 1990.

2. An investigator from the Division of Consumer Affairs, Enforcement Bureau shall obtain from Dr. Graziosi any and all wall certificates, including his dental license and/or registration certificate, and his Controlled Dangerous Substances and/or DEA license and/or registration; and any and all prescription pads.

STATE BOARD OF DENTISTRY



Samuel E. Furman, D.D.S.
President